



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-2905

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120390.

The City of McAllen Police Department (the "department") received a request for a particular offense report. You state that you have released the front page offense report information as required by *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You assert that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents submitted.

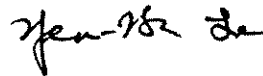
First, we note that the submitted documents include medical records. Access to medical records is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. Here, it appears that the requestor is an attorney whose client is the subject of the medical records. Section 5.08(g)(2) provides that an exception to confidentiality exists when "the patient or someone authorized to act on his behalf submits a written consent to the release of any confidential information."

Section 552.108, the "law enforcement exception," provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from public disclosure if release of

the information would interfere with the detection, investigation or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending criminal investigation. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the remaining requested information is excepted from disclosure under section 552.108(a)(1). Although section 552.108(a)(1) authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 120390

Enclosures: Submitted documents

cc: Mr. Jay Wright
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(w/o enclosures)